

1886

DWARKA
NATH RAIv.
KALI CHUN-
DER RAI.

This is a suit originally brought by five persons claiming as proprietors of the land held by the defendants, to eject them on service of notice.

In the course of the proceedings in the first Court, one of the defendants, Saroda Sundari Gupta, obtained leave to withdraw from the appeal, and was accordingly made a defendant by the other plaintiffs.

The Subordinate Judge in appeal has found that, although notice was served by all the landlords, still, inasmuch as one of them was not a plaintiff in the present suit, it must fail. The authorities cited to us—*Radha Proshad Wasti v. Esuf* (1), and *Reasut Hossein v. Chorwar Sing* (2)—do not support this view of the law. It seems rather that the plaintiffs now on the record are entitled to ask for a decree to get possession as against the defendants of their share of the estate provided that they succeed in other respects. As has been pointed out already by this Court, if such a suit were not possible, it would be in the power of the proprietor of a very small portion of a property to prevent the other proprietors from ever asking for their rights. We think, therefore, that the suit should proceed.

P. O'K.

Appeal allowed.

Before Mr. Justice Prinsep and Mr. Justice Trevelyan.

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February 11.

MOSHAULLAH (DEFENDANT) v. AHMEDULLAH (PLAINTIFF)*

Appeal—Ex parte Order—Admission of Appeal—Limitation Act, 1877, s. 5—Sufficient cause.

An *ex parte* order admitting an appeal is subject to reconsideration on the hearing of the appeal.

Poverty is not sufficient cause, within the meaning of s. 5 of the Limitation Act, Act XV of 1877, for admitting an appeal after the ordinary period of limitation prescribed therefor has expired.

— THIS was a suit to recover from the defendant the sum of Rs. 7,000, and for a declaration of lien over certain properties, situated in the 24-Pergunnahs, belonging to the defendant, a list of which was annexed to the plaint. The Court of first instance

* Appeal from Original Decree No. 6 of 1885, against the decree of Baboo Nuffur Chunder Bhutto, First Subordinate Judge of 24-Pergunnahs, dated the 27th of February 1884.

(1) I. L. R., 7 Calc., 414.

(2) I. L. R., 7 Calc., 470.

passed a decree in favour of the defendant on the 27th of September 1883. On the 12th of December 1883, the plaintiff applied for a review of judgment which was granted, and by a decree passed on review on the 27th of February 1884, the Subordinate Judge decreed the plaintiff's claim.

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The defendant applied to the High Court for leave to appeal *in forma pauperis*, and on the 6th of January 1885, an *ex parte* order was passed directing that the appeal be registered on payment of the Court-fee stamp of Rs. 34-3, which was done. When the appeal came on to be heard, the pleader for the respondent took a preliminary objection that the appeal had not been filed in proper time.

Baboo Rajendra Nath Bose, Baboo Jadub Chunder Seal and Baboo Gopal Chunder Ghosal, for the appellant.

Baboo Saroda Churn Mitter, for the respondent.

The judgment of the Court (PRINSEP and TREVELYAN, JJ.) was as follows :—

It is sufficient for the matter now under consideration, that is to say, whether or not the appellant has satisfied us that he had sufficient cause for not presenting this appeal within the period prescribed by law, to refer only to the order passed by a Division Bench of this Court on the 6th January 1885, admitting the appeal. That order was passed *ex parte*, and without notice to the respondent; and it was therefore open to reconsideration if the respondent after notice of the appeal thought proper to question the right of the appellant to have it admitted.

The grounds assigned by the appellant for special indulgence under s. 5 of the Limitation Act were then stated to be that he had not sufficient funds to proceed in the regular manner within the time prescribed by law, and it is now objected that this is not a sufficient cause. We think that the objection is fatal. If such ground be accepted as sufficient cause for a special order of this description, there would be no limit to the period for extending the usual term of limitation to presenting an appeal. We therefore feel bound to hold that this appeal is barred by limitation and we accordingly dismiss it.

Each party must pay his own costs.

P. O'K.

Appeal dismissed.